

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

IN THE MATTER OF THE SEARCH OF
5012 2ND ST E, WEST FARGO, NORTH
DAKOTA

Case No. 3:22-mj-101

**MOTION FOR EXTENSION OF
TIME TO SEARCH CERTAIN
ELECTRONICALLY STORED
INFORMATION**

The United States of America, by Mac Schneider, United States Attorney for the District of North Dakota, and Matthew D. Greenley, Assistant United States Attorney, hereby moves the Court for an Order allowing additional time to search electronically stored information obtained the execution of this search warrant.

On March 1, 2022, a search warrant was issued for the above-captioned premises. The addendum to the search warrant provided that “Electronic Devices, Storage Media, and Electronically Stored Information seized pursuant to this warrant are subject to search only for the Electronically Stored Information that is specifically described in and that is the subject of this warrant.” The addendum further provided that “the search of any electronic device, storage media, or electronically stored information authorized by the warrant shall be completed within 180 days from the date of the warrant unless, for good cause demonstrated, such date is extended by order of the Court.”

The search warrant was executed on March 3, 2022. During execution of the warrant, ten electronic devices were seized and imaged onsite or subsequently imaged and returned. On August 29, 2022, the Court entered an order extending the time for

review of electronically stored information to determine whether it was subject to seizure under the warrant until February 24, 2023.

During review of the electronic devices prior to February 24, 2023, search terms applied to the records imaged on three devices, a Dell Inspiron desktop computer, a Samsung Galaxy Note20 Ultra, and a iPhone 11 Pro, identified approximately 350 documents as potentially covered by the marital communications privilege.¹ These documents were segregated to prevent further review by the prosecution team. The majority of the documents hit on search terms that the United States has used to determine whether documents are subject to seizure under the warrant, but the documents have remained segregated and not been further searched or reviewed.

The United States now intends to utilize one or more filter personnel to review the potential marital communications documents to determine if the documents are covered by the marital communications privilege and if so, whether those documents fall within the partners in crime exception to the privilege that the Eighth Circuit has recognized. *United States v. Evans*, 966 F.2d 398, 401–02 (8th Cir. 1992). The United States believes it completed the search of the relevant electronic devices prior to February 24, 2023 by identifying the potential marital communications documents using search terms. But because the documents have been segregated from the prosecution team since that time, the United States specifically requests that the Court order that the United States may review these documents for a period of time to determine whether they are subject to

¹ The Samsung and Apple phones were also authorized to be searched under the warrants issued by the Court in cases 3:22-mj-107 and 3:22-mj-102, respectively.

seizure under the warrant, whether they are covered by the marital communications privilege, and whether the partners in crime exception to the privilege applies. To allow time for the filter personnel to complete this review and request any additional determinations from the Court, the United States requests that it be permitted to review these documents for 90 days from the date of this motion.

For the above reasons, the undersigned requests that the Court order that the United States may utilize filter personnel until April 17, 2024 to examine the potential marital privilege documents.

Dated: January 18, 2024

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United States Attorney

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